

Acknowledgments

The essays collected in this book were originally presented at a workshop held in February 2016 for the purpose of celebrating 21 years of the Centre for Employment and Labour Relations Law (CELRL) at the University of Melbourne. Inevitably, much work is required to transform a collection of workshop papers into an edited monograph for publication, and we are grateful for the efforts and support of many people. Like the day-to-day endeavours of the Centre, this monograph is truly the result of collaboration.

A special thanks goes to Cathryn Lee, who so ably and calmly organised the Workshop having commenced her role as Administrator of the CELRL only a few months earlier. We also wish to recognise former CELRL Director Colin Fenwick for his support of the Workshop concept, and for his willingness to travel a long distance to play a role in conference proceedings. We are grateful also to Adrian Faelli, the CELRL Student Fellow for 2016, who expertly attended to style guide and footnoting queries in the chapters. We thank Jason Monaghan of The Federation Press for his interest and support of the project from the outset. We thank also the rest of the team at The Federation Press for their efficient editing processes. We acknowledge the generous assistance of the Centre for Workplace Leadership at the University of Melbourne with the publication costs of the book.

In addition to the Workshop, celebrations of the CELRL's 21 years included a public lecture on an evening of the Workshop, entitled 'Researching, Teaching and Practising Labour Law'. The audience heard from a panel of speakers with a wide range of perspectives. The panel comprised Josh Bornstein (Maurice Blackburn Lawyers); Anthony Forsyth (RMIT University); Natalie James (Fair Work Ombudsman); and Sarah Rey (Justitia). We are grateful to the panel for their engaged and thoughtful discussion of the intersections between the different activities of labour law. The large registration for the lecture attested both to the interest in the topic, as well as the quality of the panel. The lecture was chaired by Geoff Giudice and we take this opportunity to thank Geoff for performing this role with his usual good humour and equanimity.

A special acknowledgment must be made of the important contributions made to the CELRL, including the production and publication of this edited collection, the legal practices and organisations that are CELRL sponsors. Currently, those practices and institutions are: Arnold Bloch Leibler; Ashurst; Bartlett Workplace Lawyers; Corrs Chambers Westgarth; Fair Work Ombudsman; Herbert Smith Freehills; Holding Redlich; Justitia; K&L Gates; King & Wood Mallesons; Lander & Rogers; Maddocks; Maurice Blackburn Lawyers; Minter Ellison; Ryan Carlisle Thomas; and Seyfarth Shaw. Without

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Last, we thank the presenters at the February Workshop, for their excellent contributions to the Workshop and for ensuring that this publication provides a valuable contribution to scholarship.

John Howe, Anna Chapman and Ingrid Landau
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About the Contributors

Helen Anderson

Helen Anderson is a Professor in the Melbourne Law School, mainly teaching company law. She joined Melbourne Law School and became a member of the Centre for Employment and Labour Relations Law in 2010. Her work has consistently tried to find ways to ensure the fair treatment of vulnerable parties. Recently she has published a book on protecting the entitlements of employees during corporate insolvency, and she is now researching ways to regulate fraudulent phoenix activity. Both these projects are funded by the Australian Research Council.

Chris Arup

Chris Arup is an Associate of the Centre for Employment and Labour Relations Law and was a participant in the Centre's 1995 'Redefining Labour Law' project, as well as the 2006 'Labour Market Regulation' research. He has written on a wide range of subjects within law and legal studies and co-edited the Cambridge series *Studies in Law and Society*. He is Adjunct Professor in the Department of Business Law and Taxation at Monash University.

Alysia Blackham

Alysia Blackham became a member of the Centre for Employment and Labour Relations Law when she was appointed as a Senior Lecturer at Melbourne Law School in 2015. Her research focuses on the intersection between employment, equality and public law, and she has published widely in United Kingdom, European and Australian law journals. Alysia's monograph, entitled *Extending Working Life for Older Workers: Age Discrimination Law, Policy and Practice*, was published by Hart Publishing in 2016. Alysia is the recipient of an Australian Research Council grant for early career researchers.

Anna Chapman

Anna Chapman is an Associate Professor in the Melbourne Law School and a Co-Director of the Centre for Employment and Labour Relations Law. She is a Co-Director of Studies in the Employment and Labour Relations Program in the Melbourne Law Masters program. Anna's research focuses on issues of discrimination, especially in relation to the intersections of work and care. She is completing a project, with Beth Gaze, examining the intersections of anti-discrimination law with the General Protections in the *Fair Work Act*. That project is funded by the Australian Research Council. Anna is a past Editor of the *Australian Journal of Labour Law*.

Catrina Denvir

Catrina Denvir is a Research Fellow and Director of the Legal Innovation Centre at Ulster University, having previously worked at the University of Sydney and University College London. She is an expert in a broad range of qualitative and quantitative research methodologies. The research Catrina conducts is inherently interdisciplinary and engages issues relevant to law, technology, legal services, legal education, access to justice, legal need and public policy. Her work has received international recognition in a range of news outlets and has been published in a variety of leading peer-review journals in different disciplines.

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Keith Ewing is a Professor of Public Law at King's College London. He is the President of the Institute of Employment Rights and Vice President of the International Centre of Trade Union Rights. His research interests lie in labour law and constitutional reform with special reference to the relationship between social rights and constitutional law. Keith has written extensively on labour law, including recognition procedures and international standards. He is an Associate of the Centre for Employment and Labour Relations Law, and teaches the subject Human Rights at Work in the Melbourne Law School Masters program.

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Peter Gahan is a Professor of Management and Director of the Centre for Workplace Leadership at the University of Melbourne. Peter has published extensively on aspects of high performance work practices, workplace innovation, employment relations and enterprise bargaining, and business regulation. He has completed commissioned research projects on these topics for numerous Australian State and federal government departments, and for a range of private and public sector organisations. Peter has been a longstanding Associate of the Centre for Employment and Labour Relations Law, and has worked with many members of the Centre.

Beth Gaze

Beth Gaze is a Professor in the Melbourne Law School, and a member of the Centre for Employment and Labour Relations Law. Her research focuses on equality and anti-discrimination law, in which she has published extensively and conducted several empirical research projects. Beth has been involved in law reform in anti-discrimination law and has acted as an expert adviser to parliament. She also teaches administrative law and has worked as a member of several tribunals. Beth's recent publications include *Equality and Discrimination Law in Australia: An Introduction* (with Associate Professor Belinda Smith of the University of Sydney) (Cambridge University Press, 2017).

Tess Hardy

Tess Hardy joined the Melbourne Law School as a Lecturer in 2014, and is a member of the Centre for Employment and Labour Relations Law. Tess's teaching and research interests include employment law, contract, regulatory compliance and enforcement. From 2005 to 2009, Tess worked as a lawyer and senior associate at national law firms in Melbourne, Tokyo and Hong Kong. From 2010 to 2013, Tess was a Research Fellow with the Centre for Employment and Labour Relations Law, during which time she undertook a doctorate on the enrolment of non-state actors by the Fair Work Ombudsman in enforcing minimum employment standards. Tess is a former Associate Editor of the *Australian Journal of Labour Law* and a current national committee member of the Australian Labour Law Association.

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Joshua Healy is a Senior Research Fellow in the Centre for Workplace Leadership at the University of Melbourne. His research interests are broadly in the areas of employment relations and labour studies, including recent work on minimum wages, the ageing workforce, skill shortages, and the employment effects of technological change. Much of Joshua's research has involved designing and analysing large, linked employer-employee surveys. He has consulted widely for governments and private firms, on major studies of aged care workers, new immigrants to Australia, and workplace health and safety. His research is covered regularly in the broadcast and print media.

Anne Hewitt

Anne Hewitt is an Associate Professor in Law at the University of Adelaide, where her research focuses on anti-discrimination law and legal education. She has been the recipient of a number of research grants from the Australian Office for Learning and Teaching, and is currently undertaking an Australian Research Council funded project examining unpaid work and regulatory challenges at the intersection of education and work (with Rosemary Owens, Andrew Stewart and Joanna Howe). She was previously a member of the Law Council of Australia's Equalising Opportunities in the Law Committee, and is a member of the Editorial Board of the *Legal Education Review*.

Joanna Howe

Joanna Howe is an Associate Professor of Law at the University of Adelaide and a consultant with Harmers Workplace Lawyers. She holds a Doctorate of Philosophy in Law from the University of Oxford where she studied as a Rhodes Scholar. Joanna is the author and co-editor of three books, including an edited collection (with Rosemary Owens), *Temporary Labour Migration in the Global Era* (Hart Publishing, 2016) and her monograph, *Rethinking Job Security* (Routledge, 2017). Joanna is regularly invited to present evidence to Australian parliamentary inquiries and reviews into Australia's temporary labour migration program and is a prominent commentator invited by many media outlets.

John Howe

John Howe is a Professor in the Melbourne Law School and a Co-Director of the Centre for Employment and Labour Relations Law. His recent research has focused on regulatory enforcement and compliance mechanisms in labour law and corporate governance. He also researches linkages between economic governance mechanisms and labour rights. John is a former Secretary of the Australian Labour Law Association. He is currently Chair of the Steering Committee of the international Labour Law Research Network, and an Editor of the *Australian Journal of Labour Law*.

Richard Johnstone

Richard Johnstone is a Professor in the School of Law at Queensland University of Technology. His research interests include labour law, and in particular work health and safety and socio-legal and regulatory approaches to labour law. Richard's first exposure to Australian labour law was in Breen Creighton's and Richard Tracey's labour law classes in the LLB in the Melbourne Law School. He was awarded his PhD by Melbourne University in 1995, while he was a member of the Centre for Employment and Labour Relations Law. He was Deputy Director of the Centre from 1994 to 1999 and Acting Director in 1997.

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Ingrid Landau is a Research Fellow in the Centre for Employment and Labour Relations Law, and a doctoral student within that Centre as well as in the Centre for International Law and the Humanities at Melbourne Law School. She holds Bachelor Degrees in Asian Studies and Law from the Australian National University, and has worked at Melbourne Law School, the Faculty of Business Law and Taxation at Monash University and at the Australian Council of Trade Unions. She has published in Australian and international journals, and has worked as principal researcher on major research projects commissioned by the Fair Work Commission and the International Labour Organization. Ingrid's research interests include Australian labour law, international and comparative labour law (with a focus on the Asia-Pacific) and corporate accountability and labour rights.

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Shelley Marshall is a RMIT University Vice Chancellor's Senior Research Fellow. She was a Senior Research Fellow at the Centre for Employment and Labour Relations Law from 2004 to 2008 and has since been an Associate of the Centre. She holds Bachelor degrees in Arts and Law from the University of Melbourne, a Masters of Science in Development Studies from the London School of Economics and Political Science and a PhD from the Australian National University. Shelley's primary interest is in the growth of informal work across the world. She has published widely on the intersection of labour law and corporations law, as well as labour market regulation in developing

and transitional contexts. She has most recently co-edited *Labour Regulation and Development* (Edward Elgar/ILO, 2016) with previous Centre Director, Colin Fenwick.

Shae McCrystal

Shae McCrystal is an Associate Professor in the University of Sydney Law School. Shae undertakes research in the areas of collective bargaining, strike action and the intersection between labour law and competition law, and has published extensively in these areas. She is currently engaged in a large scale Australian Research Council funded project (with Breen Creighton, Catrina Denvir and Richard Johnstone) examining the impact of the *Fair Work Act* on trade union behaviour and decision-making regarding industrial action. Shae has been a frequent visitor to the Centre for Employment and Labour Relations Law, spending periods of time as a visitor, and participating in Centre Workshops and the Centre seminar program.

Richard Mitchell

Richard Mitchell has taught and researched in the areas of labour law, and industrial and employment relations, since 1971. From 1988 until 2002 he was the inaugural Editor, then joint Editor, of the *Australian Journal of Labour Law*. From 1994 until 2004 he was inaugural Director of the Centre for Employment and Labour Relations Law. He is presently Professor (part-time) in the Department of Business Law and Taxation, and a member of the Ethical Regulation Research Group, at Monash University.

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Jill Murray is an Associate Professor and Reader at the La Trobe University Law School. She holds degrees in Law, Arts and Industrial Relations from Melbourne and Oxford universities. Jill has published extensively on Australian, international and EU employment law. She is the co-author (with Rosemary Owens and Joellen Riley) of *The Law of Work* (Oxford University Press, 2nd edn, 2011). Jill was a Research Fellow in the Centre for Employment and Labour Relations Law from 2000 to 2003, and remains an Associate of the Centre.

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Daniel Nicholson is a Researcher in the Centre for Workplace Leadership at the University of Melbourne. He holds qualifications in political science, social policy and social work. Daniel's research is concerned with industrial relations and labour studies, and is currently focused on the employment effects of technological change, in particular technological job adaptation. Daniel has previously worked in the community sector and the trade union movement. He is a Director of the John Cain Foundation, a think tank focused on issues of social democracy.

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Anthony O'Donnell is a Senior Lecturer in the School of Law, La Trobe University. He researches and publishes in the areas of labour law and social

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Adriana Orifici is a Research Fellow and PhD candidate in the Centre for Employment and Labour Relations Law. She is the Associate Editor of the *Australian Journal of Labour Law*. Adriana researches in employment law, with a particular focus on workplace investigations, the general protections provisions of the *Fair Work Act*, and anti-discrimination law. Her doctoral thesis examines the interface of workplace investigations with public regulation. Before commencing her PhD, Adriana worked as a lawyer and senior associate at a leading Australian law firm advising on employment law.

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Rosemary Owens AO is Professor Emerita at the University of Adelaide where she was formerly the Dame Roma Mitchell Chair of Law (2008-2015) and Dean of Law (2007-2011). Rosemary is a member of the ILO's Committee of Experts on the Application of Conventions and Recommendations. She has long been an Associate of the Centre for Employment and Labour Relations Law; she is a former Editor of the *Australian Journal of Labour Law* and now a member of its Editorial Board. She is also on the Editorial Board of the *Revue de Droit Comparé du travail et de la Sécurité Sociale*.

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Joo-Cheong Tham is an Associate Professor at the Melbourne Law School, and a member of the Centre for Employment and Labour Relations Law. His labour law research centres on the regulation of precarious work with a present focus on temporary migrant workers in Australia. This work is funded by a major research grant from the Australian Research Council. In addition to his labour law interests, Joo-Cheong researches public law and in particular political finance law. He is the inaugural Director of the Electoral Regulation Research Network.

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Maria Azzurra Tranfaglia is undertaking a PhD in comparative labour law in the Centre for Employment and Labour Relations Law, focusing on the regulation of agency work in Europe and Australia. She is a Teaching Fellow at Melbourne Law School and a Research Fellow in the Centre and as a Research Fellow has worked on several research projects, the most recent dealing with temporary labour migration. Azzurra is an employment lawyer admitted to practice in Italy, and has studied and worked in the field of labour law in both Italy and Australia.